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10 SUPERIOR COURT OF STATE OF ARIZONA
11 COUNTY OF YAVAPAI

12 STATE OF ARIZONA,

13 Plaintiff,

14 vs.

15 JAMES ARTHUR RAY,

16 Defendant.

CASE NO. V1300CR201080049

**DEFENDANT JAMES ARTHUR RAY'S
REPLY IN SUPPORT OF MOTION IN
LIMINE (NO. 2) TO EXCLUDE
EVIDENCE OF DEFENDANT'S
FINANCIAL CONDITION AND
BUSINESS PRACTICES PURSUANT TO
ARIZ. R. EVID. 404(B) AND 403**

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The State agrees, as it must, that attempts to elicit animus from jurors based on a defendant's professional or financial success are "improper and have no place in a court room." *United States v. Stahl*, 616 F.2d 30, 33 (2d Cir. 1980). Yet the State identifies no other possible purpose for the financial evidence it seeks to introduce: evidence of Mr. Ray's "financial status," his "sales practices and refund policy," and of "the cost of the Spiritual Warrior Seminar." Response at 3. The State's attempt to depict Mr. Ray as an unscrupulous businessman, and to thereby bias the jury against him, must be rejected.

II. ARGUMENT AND AUTHORITIES

A. The Evidence Is Irrelevant.

The State asserts that "there are instances when evidence of a defendant's financial circumstances is relevant and admissible." Response at 4. This is not one of them. Indeed, the State has identified no conceivable theory under which Mr. Ray's sales practices and financial status could bear upon the charges of manslaughter at issue in this case.

First, the State's strained attempt to connect Mr. Ray's wealth to motive or recklessness fails. The cases the State cites are completely inapposite. In *United States v. Quattrone*, 441 F.3d 153 (2d Cir. 2006), evidence of the defendant's salary was relevant to his motive to obstruct a government investigation of his investment-banking firm. In *United States v. Logan*, 250 F.3d 350 (6th Cir. 2001), defendants were charged with making false entries in reports regarding pools of loans they had issued, and evidence of their income "had a significant probative value because it demonstrated what [they] stood to lose if they properly reported the actual loan delinquencies." *Id.* at 369. Those are cases where a defendant's *deliberate deception* in a business setting could be explained by a desire to continue receiving a high salary. There is simply no parallel here. Mr. Ray is not charged with fraud, or any other specific intent crime, but with recklessness. And the State's insistence that Mr. Ray wished to increase participation in his seminars bears no logical connection whatsoever to whether he was "aware of and consciously

1 disregard[ed] a substantial and unjustifiable risk” related to the sweat lodge ceremony. A.R.S.
2 §13-105.

3 Second, the cost of the event is not relevant to any material fact. In a sideshow, the
4 State speculates that the amount of money participants paid to attend the Spiritual Warrior retreat
5 may have “compelled them to participate fully in all of the events.” Response at 5. As a
6 preliminary matter, the State’s apparent theory is riddled with logical and factual gaps. First, Liz
7 Neuman, one of the decedents, was a volunteer at the event; she did not pay any money at all.
8 Furthermore, the cost of the Spiritual Warrior Retreat was for the entire 5-day retreat, not just the
9 sweat lodge ceremony. There is simply no support for the State’s speculation that the cost of the
10 entire retreat compelled participants to stay in the sweat lodge. And there is significant evidence
11 to the contrary. Three participants, Elsa Hafstad, Simin Marvaan and Dr. Soheyla Marzvaan,
12 chose to not participate in the sweat lodge at all. And many people left the sweat lodge rather than
13 completing it. Even if one or two participants identified the amount of money they paid as having
14 *any* bearing on their motivation to get the most out of the retreat, that clearly is not proof of the
15 motivation of the other 55 participants, let alone the decedents, who had varying reasons for trying
16 to complete the sweat lodge that had nothing to do with costs of the event. More fundamentally,
17 the State does not explain how its unfounded conjecture about the *decedents’* purported frame of
18 mind bears upon *Mr. Ray’s* mental state. Absent a causal nexus between the State’s speculation
19 and the relevant question—whether Mr. Ray caused the victims’ deaths with reckless behavior—
20 the evidence must be excluded.

21 When the State’s specious arguments are stripped away, it is apparent that the State
22 wishes to denigrate Mr. Ray’s character by portraying him as a slick and successful businessman.
23 The State seeks to convey to the jury that if Mr. Ray somehow conducted his business in a manner
24 the jury disapproves of, albeit not in ways that have any bearing on manslaughter charges, they
25 should convict. Arizona’s rules of evidence affirmatively prohibit this kind of character attack.

26 **B. The Evidence Is Unduly Prejudicial Under Rule 403.**

27 Even if the State were able to concoct a theory of relevance for the financial
28 evidence, which it cannot, the evidence must be excluded under Rule 403. Evidence that Mr. Ray

1 operated a successful business, or that others viewed him as having behaved in a manner that was
2 distasteful or unscrupulous, is extremely likely to be viewed by the jury as evidence that Mr. Ray
3 is a distasteful person. This evidence invites the jury to render a verdict based on emotions,
4 passions, and prejudice—and not based on whether Mr. Ray in fact committed the charged
5 offenses. The Court should exclude the evidence so that the jury is not prejudicially influenced in
6 this manner. *See* Ariz. R. Evid. 403; *State v. Mott*, 187 Ariz. 536, 545 (1997).

7 **III. CONCLUSION**

8 For the foregoing reasons, Mr. Ray requests the Court grant his motion to exclude
9 evidence of his financial status and business practices pursuant to Arizona Rules of Evidence 404
10 and 403.

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12 DATED: August 10, 2010

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16 By:  _____

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18 Copy of the forgoing mailed/faxed/
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20 Sheila Polk
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23 By: _____
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